

periodic review of such research. The term has the same meaning as the phrase *institutional review committee* as used in section 520(g) of the act.

(j) *Test article* means any drug (including a biological product for human use), medical device for human use, human food additive, color additive, electronic product, or any other article subject to regulation under the act or under sections 351 and 354–360F of the Public Health Service Act (42 U.S.C. 262 and 263b–263n).

(k) *Minimal risk* means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

(l) *Legally authorized representative* means an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject's participation in the procedure(s) involved in the research.

(m) *Family member* means any one of the following legally competent persons: Spouse; parents; children (including adopted children); brothers, sisters, and spouses of brothers and sisters; and any individual related by blood or affinity whose close association with the subject is the equivalent of a family relationship.

[45 FR 36390, May 30, 1980, as amended at 46 FR 8950, Jan. 27, 1981; 54 FR 9038, Mar. 3, 1989; 56 FR 28028, June 18, 1991; 61 FR 51528, Oct. 2, 1996; 62 FR 39440, July 23, 1997; 64 FR 399, Jan. 5, 1999]

EFFECTIVE DATE NOTE: At 64 FR 399, Jan. 5, 1999, § 50.3 was amended by removing and reserving paragraph (b)(11), and by removing “, 507(d),” from paragraph (c), effective May 20, 1999.

Subpart B—Informed Consent of Human Subjects

SOURCE: 46 FR 8951, Jan. 27, 1981, unless otherwise noted.

§ 50.20 General requirements for informed consent.

Except as provided in §§ 50.23 and 50.24, no investigator may involve a human being as a subject in research

covered by these regulations unless the investigator has obtained the legally effective informed consent of the subject or the subject's legally authorized representative. An investigator shall seek such consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. The information that is given to the subject or the representative shall be in language understandable to the subject or the representative. No informed consent, whether oral or written, may include any exculpatory language through which the subject or the representative is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the institution, or its agents from liability for negligence.

[46 FR 8951, Jan. 27, 1981, as amended at 64 FR 10942, Mar. 8, 1999]

§ 50.23 Exception from general requirements.

(a) The obtaining of informed consent shall be deemed feasible unless, before use of the test article (except as provided in paragraph (b) of this section), both the investigator and a physician who is not otherwise participating in the clinical investigation certify in writing all of the following:

(1) The human subject is confronted by a life-threatening situation necessitating the use of the test article.

(2) Informed consent cannot be obtained from the subject because of an inability to communicate with, or obtain legally effective consent from, the subject.

(3) Time is not sufficient to obtain consent from the subject's legal representative.

(4) There is available no alternative method of approved or generally recognized therapy that provides an equal or greater likelihood of saving the life of the subject.

(b) If immediate use of the test article is, in the investigator's opinion, required to preserve the life of the subject, and time is not sufficient to obtain the independent determination required in paragraph (a) of this section

in advance of using the test article, the determinations of the clinical investigator shall be made and, within 5 working days after the use of the article, be reviewed and evaluated in writing by a physician who is not participating in the clinical investigation.

(c) The documentation required in paragraph (a) or (b) of this section shall be submitted to the IRB within 5 working days after the use of the test article.

(d)(1) The Commissioner may also determine that obtaining informed consent is not feasible when the Assistant Secretary of Defense (Health Affairs) requests such a determination in connection with the use of an investigational drug (including a biological product) in a specific protocol under an investigational new drug application (IND) sponsored by the Department of Defense (DOD). DOD's request for a determination that obtaining informed consent from military personnel is not feasible must be limited to a specific military operation involving combat or the immediate threat of combat. The request must also include a written justification supporting the conclusions of the physician(s) responsible for the medical care of the military personnel involved and the investigator(s) identified in the IND that a military combat exigency exists because of special military combat (actual or threatened) circumstances in which, in order to facilitate the accomplishment of the military mission, preservation of the health of the individual and the safety of other personnel require that a particular treatment be provided to a specified group of military personnel, without regard to what might be any individual's personal preference for no treatment or for some alternative treatment. The written request must also include a statement that a duly constituted institutional review board has reviewed and approved the use of the investigational drug without informed consent. The Commissioner may find that informed consent is not feasible only when withholding treatment would be contrary to the best interests of military personnel and there is no available satisfactory alternative therapy.

(2) In reaching a determination under paragraph (d)(1) of this section that obtaining informed consent is not feasible and withholding treatment would be contrary to the best interests of military personnel, the Commissioner will review the request submitted under paragraph (d)(1) of this section and take into account all pertinent factors, including, but not limited to:

(i) The extent and strength of the evidence of the safety and effectiveness of the investigational drug for the intended use;

(ii) The context in which the drug will be administered, e.g., whether it is intended for use in a battlefield or hospital setting or whether it will be self-administered or will be administered by a health professional;

(iii) The nature of the disease or condition for which the preventive or therapeutic treatment is intended; and

(iv) The nature of the information to be provided to the recipients of the drug concerning the potential benefits and risks of taking or not taking the drug.

(3) The Commissioner may request a recommendation from appropriate experts before reaching a determination on a request submitted under paragraph (d)(1) of this section.

(4) A determination by the Commissioner that obtaining informed consent is not feasible and withholding treatment would be contrary to the best interests of military personnel will expire at the end of 1 year, unless renewed at DOD's request, or when DOD informs the Commissioner that the specific military operation creating the need for the use of the investigational drug has ended, whichever is earlier. The Commissioner may also revoke this determination based on changed circumstances.

[46 FR 8951, Jan. 27, 1981, as amended at 55 FR 52817, Dec. 21, 1990; 64 FR 399, Jan. 5, 1999]

EFFECTIVE DATE NOTE: At 64 FR 399, Jan. 5, 1999, in § 50.23, paragraph (d)(1) was amended by removing the phrase "(including an antibiotic or biological product)" and adding in its place the phrase "(including a biological product)", effective May 20, 1999.